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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/037,822	03/10/1998	SATORU MOTOYAMA	25484.00643	7579

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EXAMINER	
WILLETT, STEPHAN F	

ART UNIT	PAPER NUMBER
2141	35

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/037,822	Motoyama
Examiner	**Art Unit**
Stephan Willett	2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Dec 15, 2003*.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *29, 33, 37, 41-47, 50, and 52* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) *29, 33, 37, 47, 50, and 52* is/are allowed.

6) ☒ Claim(s) *41-46* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Allowable Subject Matter

1. Claims 29, 33, 37, 47, 50 and 52 are allowed.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 41, 45, and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Initial data" is unclear since initial in reference to some other thing that is subsequent.

4.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 41, 45, and 46 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, "initial data" is not enabled in the Applicant's Specification.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline et al. with Patent Number 5,883,957 in view of Isozaki with Patent Number 5,999,905.

8. Regarding claims 41, 45-46, Moline teaches a quasi-real time or streaming MIDI music playing technique. Moline teaches receiving music data over a public communications line or the Internet, col. 8, lines 7-11, 63-67. Moline teaches judging whether data is specific data, col. 9, lines 43-46. Moline teaches receiving first time information as "MIDI file reader includes two subcomponents ... parser reads events in order from track, each event of course includes event message and elapsed time descriptor", col. 6, lines 44-48, and particularly, "elapsed time descriptor is converted to time stamp", col. 6, lines 58-59 and in more detail, col. 6, lines 51-55 . Moline teaches subtracting a predetermined time [time delay] from time information as "the delay time period is added to the server start time", col. 13, lines 10-11 or "the amount of track that must be accumulated before receiver begins playing the track is determined by a delay parameter set by the user of receiver", col. 12, lines 1-3, "delay 617 in Fig. 6", col. 11, line 67. Moline teaches storing means for temporarily storing the data received by said reception means as "MIDI stream generator keeps track of the last event that it output, the amount of time that has actually elapsed since it began playing the track, and the total amount of time specified by the

elapsed time indicators in events played thus far", see Moline et al. col. 6, lines 26-31, and "the result of this operation is an event, which is then added to stored track in memory" at col. 6, lines 53-54. Moline teaches processing means for starting the processing of the data temporarily stored in said memory when said second time information reaches the first as "output event messages until either an event is reached whose time stamp is greater", and "this incremental addition of parts", col. 7, 8, lines 15-16, 4-6, "the delay varies as the preferred embodiment waits to begin [subtracts] playing track until enough of track has accumulated", col. 11, lines 59-64, "beginning at the start of stored track, the time stamp of each event is added to the server start time and subtracted from the play time", col. 13, lines 12-14 and "MIDI stream generator generates MIDI stream from stored track as follows: ... set the timer and wait for it to expire again", col. 7, lines 10-20. Moline teaches specific or initial data as "type" of data, col. 9, lines 42-43. Moline teaches "when the browser receives", col. 9, line 42 which means if it is determined that the type of data is "initial" or encrypted, or not completely received, Web enabled, or of a certain format, col. 5, lines 51-61 then the data may or may not be delayed. Moline teaches the invention in the above claims except for explicitly teaching a second time, however, Moline waits the said second time until the track is played. In that Moline operates to buffer data for quasi-real time play the artisan would have looked to the computer data streaming arts for details of buffering signals. In that art, Isozaki, a related data buffering system, teaches a chaining of data streams. Isozaki, specifically teaches "a start time", col. 11, lines 2-3. A second time is taught. The motivation to incorporate a stated second time insures that data is generated at the right time Thus, it would have been obvious to one of ordinary skill in the art to

incorporate the computed time as taught in Isozaki into the MIDI player described in the Moline patent because Moline operates with delay times to achieve streaming data and Isozaki suggests that streaming of data can be obtained with a second computed time. Therefore, by the above rational, the above claim(s) are rejected.

9. Regarding claims 42, Moline teaches an absolute time added to said first time as "time stamp contains the sum of the elapsed times in all of the time descriptors from the beginning of [the] track", col. 6, lines 53-54.

10. Regarding claims 43, Moline teaches rectifying or delaying said first time, col. 13, lines 26-27.

11. Regarding claims 44, Moline teaches a determiner that calculates the delay time, col. 11, lines 41-44, 62-66, in accord with memory capacity col. 7, lines 1-4, col. 12, lines 64-66 and col. 13, lines 4-6.

12. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline et al. with Patent Number 5,883,957 in view of Shioda with patent Number 5,430,243.

13. Regarding claims 41, 45-46, teaches a quasi-real time or streaming MIDI music playing technique. Moline teaches receiving music data over a public communications line or the Internet, col. 8, lines 7-11, 63-67. Moline teaches judging whether data is specific data, col. 9, lines 43-46. Moline teaches receiving first time information as "MIDI file reader includes two subcomponents ... parser reads events in order from track, each event of course includes event message and elapsed time descriptor", col. 6, lines 44-48, and particularly, "elapsed time

descriptor is converted to time stamp", col. 6, lines 58-59 and in more detail col. 6, lines 51-55 . Moline teaches subtracting a predetermined time [time delay] from time information as "the delay time period is added to the server start time", col. 13, lines 10-11 or "the amount of track that must be accumulated before receiver begins playing the track is determined by a delay parameter set by the user of receiver", col. 12, lines 1-3, "delay 617 in Fig. 6", col. 11, line 67. Moline teaches storing means for temporarily storing the data received by said reception means as "MIDI stream generator keeps track of the last event that it output, the amount of time that has actually elapsed since it began playing the track, and the total amount of time specified by the elapsed time indicators in events played thus far", see Moline et al. col. 6, lines 26-31, and "the result of this operation is an event, which is then added to stored track in memory" at col. 6, lines 53-54. Moline teaches processing means for starting the processing of the data temporarily stored in said memory when said second time information reaches the first as "output event messages until either an event is reached whose time stamp is greater", and "this incremental addition of parts", col. 7, 8, lines 15-16, 4-6, "the delay varies as the preferred embodiment waits to begin [subtracts] playing track until enough of track has accumulated", col. 11, lines 59-64, "beginning at the start of stored track, the time stamp of each event is added to the server start time and subtracted from the play time", col. 13, lines 12-14 and "MIDI stream generator generates MIDI stream from stored track as follows: ... set the timer and wait for it to expire again", col. 7, lines 10-20. Moline teaches specific or initial data as "type" of data, col. 9, lines 42-43. Moline teaches "when the browser receives", col. 9, line 42 which means if it is determined that the type of data is "initial" or encrypted, or not completely received, Web

enabled, or of a certain format, col. 5, lines 51-61 then the data may or may not be delayed. Moline teaches the invention in above claims except for explicitly teaching a second time, however, Moline waits the said second time until the track is played. In that Moline operates to buffer data for quasi-real time play the artisan would have looked to the computer data streaming arts for details of buffering signals. In that art, Shioda, a related data buffering system, teaches a "basic delay time", col. 4, lines 37 in order to delay "a voice and/or musical tone produced by an electronic musical instrument", col. 4, lines 37-38. Shioda, specifically teaches that "a basic delay time-calculating routine for calculating a basic delay time based on a timing clock of a MIDI signal is started" at col. 4, lines 46-48 and col. 8, lines 28-30. A timing clock and second time is taught that is used to determine delay times. Further, Shioda suggests that "an excellent repeat effect to the performance", col. 1, lines 65-66 will result from applying the delay times. The motivation to incorporate a delay and second time insures that a reference time is used to accurately apply delay times. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the delay and second time as taught in Shioda into the MIDI player described in the Moline patent because Moline operates with delay times to achieve streaming data and Shioda suggests that streaming of data can be obtained with timers and set times. Therefore, by the above rational, the above claim(s) are rejected.

14. Regarding claims 42, Moline teaches an absolute time added to said first time as "time stamp contains the sum of the elapsed times in all of the time descriptors from the beginning of [the] track", col. 6, lines 53-54.

15. Regarding claims 43, Moline teaches rectifying or delaying said first time, col. 13, lines

26-27.

16. Regarding claims 44, Moline teaches a determiner that calculates the delay time, col. 11, lines 41-44, 62-66, in accord with memory capacity col. 7, lines 1-4, col. 12, lines 64-66 and col. 13, lines 4-6.

Response to Amendment

17. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

18. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

19. The applicant presently claims a method of simply adjusting start times to achieve delayed streaming data. It is suggested more detail is claimed into what types of data resulting in streaming data is not delayed or not. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

20. Applicant suggests "the inclusion is thus not 'initial data'", Paper No. 34, Page 11, lines 7-8. First, applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the references and relevant portions of the reference. Moline teaches "when the browser receives", col. 9, line 42 which means if it is determined that the type of data is "initial" or encrypted, or not completely received, Web enabled, or of a certain format, col. 5, lines 51-61 then the data may or

may not be delayed. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

25. Any inquiry of a general nature or relating to the status of this application

sfw

December 23, 2003

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER